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9 Attorneys for Plaintiffs EVOLV HEALTH, LLC  
and EVOLVHEALTH MEXICO SERVICIOS, S.  
10 de R.L. de C.V.

11  
12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

14 EVOLV HEALTH, LLC and  
EVOLVHEALTH MEXICO  
15 SERVICIOS, S. de R.L. de C.V.,

16 Plaintiffs,

17 vs.

18 COSWAY USA, INC., d/b/a  
ECOSWAY USA, INC., GLEN  
19 JENSEN, JEFFREY N. ALDOUS and  
VINCENT TAN,

20 Defendants and Does 1-10.  
21  
22  
23  
24

CASE NO. 2:16-cv-01602-ODW (ASx)

**DECLARATION OF J. ROBERT  
ARNETT II IN SUPPORT OF  
MOTION TO WITHDRAW AS  
COUNSEL FOR PLAINTIFFS**

Pretrial Conference: August 7, 2017  
Trial Date: August 29, 2017

Date: April 17, 2017  
Time: 1:30 p.m.  
Place: Courtroom 11  
312 N. Spring Street  
Los Angeles, CA 90012  
Judge: Hon. Otis D. Wright II

25 1. My name is J. Robert Arnett II. I am over the age of eighteen years of  
26 age, competent to testify to the matters set forth herein, and have personal  
27 knowledge of the facts stated herein and all such facts are true and correct.  
28

1           2.     I am an attorney licensed to practice law in the States of Texas and  
2     Hawaii and the Territory of the United States Virgin Islands. I am admitted to  
3     practice before the United States Supreme Court, the United States Courts of  
4     Appeals for the Third, Fifth, Eighth, Ninth, Tenth, Eleventh, and Federal Circuits,  
5     and the United States District Courts for the Northern District of Texas, Eastern  
6     District of Texas, Southern District of Texas, Western District of Texas, District of  
7     Hawaii, District of Arizona, District of Colorado, and District of the Virgin Islands,  
8     and admitted *pro hac vice* in this action. I am a partner in the law firm of Carter  
9     Scholer, PLLC (formerly known as Carter Scholer Arnett Hamada & Mockler,  
10    PLLC).

11           3.     Attached hereto as Exhibit 1 is a true and correct copy of an  
12    engagement letter dated October 24, 2013 among Evolv Health, Friedman &  
13    Feiger, and Carter Scholer. Michael L. Gaubert, who signed this letter on behalf of  
14    Friedman & Feiger, was a partner at Friedman & Feiger at the time and the lawyer  
15    who originated this matter.

16           4.     Pursuant to the engagement letter, on November 13, 2013, Friedman &  
17    Feiger and Carter Scholer commenced an action on behalf of Evolv Health, LLC,  
18    Evolv Health International, LLC, and EvolvHealth Mexico Servicios, S. de R.L. de  
19    C.V., against EpicEra Incorporated, eCosway USA, Inc., Glen Jensen, and Jeffrey  
20    N. Aldous, in the 68<sup>th</sup> Judicial District Court of Dallas County, Texas (the "Texas  
21    Action"). Other individuals were subsequently joined as defendants in the Texas  
22    Action.

23           5.     The Texas Court dismissed, without prejudice, certain claims against  
24    eCosway, Jensen, and Aldous based on one of three forum selection clauses in a  
25    Mutual Non-Disclosure and Non-Circumvention Agreement that had been executed  
26    by Evolv Health and eCosway in connection with a meeting in June 2013. Later,  
27    the Texas Court decided that all claims in the Texas Action against eCosway,  
28    Jensen, and Aldous should be brought in California and gave Plaintiffs the option of

1 non-suiting (a voluntary dismissal without prejudice) the remaining claims against  
2 these parties in order to bring the claims in California. Plaintiffs non-suited their  
3 remaining claims in the Texas Action against eCosway, Jensen, and Aldous.

4 6. In 2015, Mr. Gaubert left Friedman & Feiger and joined Lewis  
5 Brisbois Bisgaard & Smith, LLP. Mr. Gaubert and Friedman & Feiger both  
6 continued to work on the Texas Action and agreed that Friedman & Feiger's 75%  
7 of the contingent fee would be split equally between them.

8 7. On March 10, 2016, the Lewis Brisbois firm filed the complaint  
9 commencing this action, which was essentially bringing the claims against  
10 eCosway, Jensen, and Aldous that the Texas court had dismissed. At this time, the  
11 Texas Action was set to commence trial in June 2016, but the trial was  
12 subsequently reset to commence on August 23, 2016.

13 8. In July 2016, Mr. Gaubert left the Lewis Brisbois firm and began  
14 practicing as The Gaubert Law Group. Mr. Gaubert has told me that the Lewis  
15 Brisbois firm is functioning as local counsel on an hourly fee basis in this action  
16 and that he retains his percentage of the contingent fee.

17 9. Mr. Gaubert currently offices in Evolv Health's Dallas office located  
18 at 5001 Spring Valley Road, Suite 500W, Dallas, Texas 75244.

19 10. The Texas Action was tried to a jury in August and September 2016. I  
20 was lead trial counsel and was assisted by Mr. Gaubert and Carter Boisvert of  
21 Friedman & Feiger. On September 9, 2016, the jury returned a verdict against  
22 EpicEra and three individual defendants. On October 24, 2016, the Texas Court  
23 entered a final judgment based on the jury's verdict.

24 11. In the course of the Texas Action, Carter Scholer incurred significant  
25 out-of-pocket expenses for which it regularly invoiced Plaintiffs. Plaintiffs did not  
26 timely pay those invoices and, by October 2106, had failed to pay Carter Scholer  
27 for expenses going back several months (to March 2016). In addition, Carter  
28 Scholer had engaged a damages expert, William Barnard, on behalf of Plaintiffs

1 and retained a jury consultant, Cathy E. Bennett & Associates, and a trial  
2 technology consultant, Point Multimedia, to assist with the trial in the Texas  
3 Action. Plaintiffs repeatedly failed to pay the invoices of the expert and the  
4 consultants. Carter Scholer and I have had long working relationships with Cathy  
5 E. Bennett & Associates and Point Multimedia. Both are small companies that are  
6 harmed by non-payment for their services.

7 12. In October 2016, I contacted Evolv Health's chairman, Trey White,  
8 repeatedly about the unpaid invoices. Mr. White assured me that he would take  
9 care of the invoices, but no payments were made.

10 13. On November 18, 2016, I had an face-to-face meeting with Mr. White  
11 and Mr. Gaubert and advised them that Plaintiffs' failure to pay crucial expenses  
12 had created huge problems for me and that Carter Scholer would likely withdraw  
13 from all matters for Plaintiffs after the first of the year due to such non-payments.  
14 Mr. White promised me that Plaintiffs would pay Carter Scholer's invoices "by the  
15 end of the month" (i.e., November 2016).

16 14. Plaintiffs did not make any payments by the end of November 2016. I  
17 had another face-to-face meeting with Mr. White on December 5, 2016, at which  
18 time he promised me that Plaintiffs would pay Carter Scholer's invoices by the end  
19 of the year. On Friday, December 16, 2016, Mr. White told me payment would be  
20 made the following week.

21 15. Plaintiffs did not make any payments on the invoices before the end of  
22 December 2016, despite Plaintiffs' repeated assurances during the fall of 2016.

23 16. In order to preserve our relationship with Cathy E. Bennett &  
24 Associates, I agreed to personally pay its invoice and seek reimbursement from  
25 Plaintiffs. I advised Mr. White of this on January 3, 2017.

26 17. On January 2, 2017, I emailed a letter to Mr. White with a copy to Mr.  
27 Gaubert advising that Carter Scholer was withdrawing from the representation of  
28

1 Plaintiffs in all matters, including this action, due to persistent non-payment of  
2 Carter Scholer's invoices and the invoices of the expert and consultants.

3 18. On January 5, 2017, Mr. Gaubert called me on behalf of Mr. White  
4 and requested that I delay filing any motions to withdraw until after the defendant's  
5 post-trial motions were heard in the Texas Action to avoid creating "bad optics"  
6 before the Judge in the Texas Action. I agreed to delay filing the motions to  
7 withdraw until after the post-trial motions were heard.

8 19. On or about January 6, 2017, Plaintiffs paid Carter Scholer's  
9 outstanding invoices, but the consultants remained unpaid. Plaintiffs had reportedly  
10 reached a payment plan with Mr. Barnard (the damages expert), but had only made  
11 one payment.

12 20. On January 12, 2017, I emailed Mr. White and Mr. Gaubert and  
13 reiterated that Carter Scholer would file its motions to withdraw once the post-trial  
14 motions in the Texas Action were heard.

15 21. On February 2, 2017, Greg Glass of Point Multimedia advised me that  
16 his company had been paid that day.

17 22. The Judge in the Texas Action heard the defendants' post-trial motions  
18 on February 6, 2017, and denied the motions.

19 23. On February 8, 2017, I emailed Mr. White and Mr. Gaubert that we  
20 needed to proceed with the withdrawals since the post-trial motions had been heard  
21 and decided in Plaintiffs' favor. In that email, I also asked if someone was going to  
22 substitute for Carter Scholer and me in this federal court action. Thereafter, I had  
23 several conversations with Mr. Gaubert about who would be substituting as counsel  
24 of record for Carter Scholer and me in this action. Mr. Gaubert told me that various  
25 scenarios were being considered, but did not give me a definitive answer.

26 24. In February and early March 2017, I dealt with Michael Willes,  
27 counsel for defendants in this action, regarding discovery issues because substitute  
28 counsel had not been identified. In the course of this, I sent multiple requests to

1 Mr. White and Mr. Gaubert for input and information regarding these discovery  
2 issues--which they ignored.

3 25. By March 8, 2017, I had run out of patience with the delays and failure  
4 to make a decision on substitute counsel. Accordingly, I prepared a motion for  
5 withdrawal of counsel and forms reflecting Plaintiffs' consent to the withdrawal,  
6 emailed them to Mr. White and Mr. Gaubert, and requested that the consent forms  
7 be signed and returned to me for filing with this Court.

8 26. On March 8, 2017, Plaintiffs delivered a check to reimburse me for the  
9 jury consultant's fees.

10 27. On March 10, 2017, Mr. White emailed me and took the position that  
11 Carter Scholer should remain as counsel of record for Plaintiffs in this action  
12 because the invoices that Plaintiffs had persistently failed to pay had been paid  
13 now, except for Mr. Barnard's invoices and Plaintiffs were "current" per an  
14 agreement with him. Mr. White did not return the signed consent to withdrawal  
15 forms.

16 28. On March 13, 2017, I emailed Mr. White and explained that Carter  
17 Scholer had elected to withdraw on January 2, 2017 based on the many broken  
18 promises to pay, and that Plaintiffs finally paying the bills long after they were past  
19 due did not change that. I further advised Mr. White that we would be filing the  
20 motion to withdraw as a contested motion.

21 29. Finally, Carter Scholer and I no longer have the necessary mutual trust  
22 in and with Plaintiffs that is a vital component of a healthy and effective attorney-  
23 client relationship. As noted above, Plaintiffs have not cooperated with Carter  
24 Scholer and me with respect to the timely payment of Plaintiffs' contractual  
25 obligations as well as their non-discretionary obligation to cooperate with counsel  
26 in their representation (e.g., with respect to discovery). Without that mutual trust,  
27 this particular attorney-client relationship cannot be sustained. Plaintiffs would be  
28 better served by being represented by new counsel where mutual trust is present.

1 Therefore, Carter Scholer and I respectfully request that our motion to withdraw be  
2 granted.

3 I declare under penalty of perjury under the laws of the United States that the  
4 foregoing is true and correct.

5 Executed at Dallas, Texas, on March 16, 2017.

6  
7 /s/ J. Robert Arnett II

8 J. Robert Arnett II

9 **CERTIFICATE OF SERVICE**

10 The undersigned hereby certifies that a true and correct copy of the above  
11 and foregoing document has been served on March 16, 2017 on all counsel of  
12 record who are deemed to have consented to electronic service via the Court's  
13 CM/ECF system per Local Rule 5-3.2.2 and upon the following by electronic mail  
14 and hand delivery:

15  
16 Evolv Health, LLC  
17 5001 Spring Valley Road, Suite 500W  
18 Dallas, Texas 75244

19  
20 EvolvHealth Mexico Servicios, S. de R.L. de C.V.  
21 5001 Spring Valley Road, Suite 500W  
22 Dallas, Texas 75244

23  
24 /s/ J. Robert Arnett II

25 J. Robert Arnett II